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Supreme Court, U.S.
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No. 95-2053

IN THE
Supreme Court of the United States

October Term, 1995

SYLVIA L. BECKEY, d/b/a THE AMERICAN INSTITUTE OF LAW, ECONOMICS & COMPARATIVE STUDIES,
Petitioner,

v.

CENLAR FEDERAL SAVINGS BANK,
Respondent.

Application for a Writ of Certiorari to the Supreme Court of the State of Texas

RESPONDENT'S BRIEF IN OPPOSITION

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11 pp

CERTIFICATE OF INTERESTED PARTIES

1. Sylvia L. Beckey, Petitioner, The American Institute of law, Economics & Comparative Studies, 2624 Weslayan Street, #1142, Houston, Texas 77027, (512) 479-1688.

2. Cenlar Federal Savings Bank, 425 Phillips Boulevard, Trenton, New Jersey 08618, (609) 683-4488.

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STATUTES

28 U.S.C. §1257 . . . . . 1, 2, 3, 4

Tex.Prop.Code Ann. 51.002 (West 1995) 1, 2, 5, 5

I. STATEMENT OF JURISDICTION

Petitioner, Sylvia L. Beckey, has asserted jurisdiction pursuant to 28 U.S.C. §1257. Respondent, Cenlar Federal Savings Bank, disputes that jurisdiction has been established because Petitioner has not produced a sufficient record on appeal to establish any of the elements of 28 U.S.C. §1257.

II. QUESTIONS PRESENTED FOR REVIEW

1. Has a sufficient record been produced in this Court to allow Petitioner to raise the issues presented in the Petition for Writ of Certiorari?

2. Does this Court have jurisdiction over this appeal?

3. Is the Texas Foreclosure Statute, Texas Property Code §51.002 constitutional?

III. STATEMENT OF THE CASE

Petitioner alleges to be an individual who borrowed money from Respondent to purchase a home in Austin, Texas. According to her Petition for Writ of Certiorari, Petitioner's loan was secured by a deed of trust which provided for a non-judicial foreclosure sale as a remedy in the event of default. According to her Petition, Petitioner defaulted on her loan and her real estate was foreclosed on. Petitioner alleges that a forcible entry and detainer action ensued which caused her to file a proceeding in the Justice Court of Travis County, Texas, prosecute an appeal to the County Court at Law No. 2 of

Travis County, Texas, and thereafter prosecute appeals to the Court of Appeals for the Third Supreme Judicial District and the Texas Supreme Court. Petitioner apparently seeks a review of the decisions of the lower courts in Texas.

IV. SUMMARY OF ARGUMENT

1. Petitioner has produced no record on appeal. Therefore, Petitioner has waived any right she may have had for this Court to review the proceedings of the Texas state courts.

2. Petitioner has not demonstrated that she is appealing from a final decision of the Texas Supreme Court. Likewise, Petitioner has not shown that this appeal deals with a statute which is allegedly repugnant to the Federal Constitution and/or the laws of the United States as is required by 28 U.S.C. §1257. Therefore there is no jurisdiction to support the Petition for Writ of Certiorari.

3. The Texas foreclosure statute, Texas Property Code §51.002, is constitutional. Petitioner has demonstrated no reason for this Court to find the statute unconstitutional.

V. ARGUMENTS

1. No Record on Appeal.

Petition makes liberal references to facts, especially on pages 2-14 of her Petition for Writ of Certiorari. The Petition makes absolutely no reference to any record on appeal other

than certain "computer reconstructions" attached as appendices. There are no pleadings from the courts below, no briefs, no transcripts of evidentiary proceedings, and no correct copies of court orders or decrees.

This Court has held the decisions of courts below and their supporting records must be sufficiently complete to allow for a fair review. See Ramsey v. United Mine Workers of America, 401 U.S. 302 at 312 (1971). See also Kelly v. Panama Canal Commission, 26 F.3d 597 (5th Cir. 1994) and Walter Fuller Aircraft Sales, Inc. v. Republic of Philippines, 965 F.2d 1375 (5th Cir. 1992). It is the burden of the party prosecuting an appeal to provide a sufficient record for the reviewing court to consider the matters raised on appeal. See Great Plains Equipment, Inc. v. Koch Gathering Systems, Inc., 45 F.3d 962 (5th Cir. 1995); Powell v. Estelle, 959 F.2d 22 (5th Cir. 1992). Matters not in the record on appeal are waived. See Lewis v. Parish of Terrebone, 894 F.2d 142 (5th Cir. 1990).

In this case, there is no record. It is impossible to determine what facts were proved in the courts below, what issues were raised in the courts below, what orders were issued by the courts below, or the basis for the decisions of the courts below. Under these circumstances, Petitioner has waived any right to have this Court review the matters raised in her Petition for Writ of Certiorari.

2. No Jurisdiction

28 U.S.C. §1257 establishes jurisdiction of this Court to review final judgments or decrees rendered by the highest court of a state, where the validity of a statute is drawn into question because the statute is repugnant to the Federal

Constitution or the laws of the United States. Petitioner has established none of these matters by this appeal.

It is imperative that the Petitioner establish that she first raised her constitutional issues in the state courts. "It was very early established that the Court will not decide federal constitutional issues raised here for the first time on review of state court decisions." Cardinale v. Louisiana, 394 U.S. 437 at 438 (1969). It has also been established by the courts that a party may not collaterally attack the validity of a state court judgment by merely injecting Federal Constitutional issues. "It is a well-settled principle that a plaintiff may not seek a reversal in federal court of a state court judgment simply by casting his complaint in the form of a civil rights action." See Reed v. Terrell, 759 F.2d 472 at 473 (5th Cir. 1985). There is nothing in the record before this case to show that Constitutional issues were raised in the Texas court or how the lower courts ruled on these questions.

Moreover, at page two of the Petition for Writ of Certiorari, the Petitioner complains about the decisions of the Third Judicial District Court of Appeals and three decisions of Judge David Phillips, who presides over Count Court at Law No. 2 of Travis County, Texas. This Court has no jurisdiction to review any of these matters inasmuch as none of these courts constitutes the highest court in the State of Texas, as required by 28 U.S.C. § 1257.

3. § 51.002 of the Texas Property Code is Constitutional

The courts of the United States have consistently held that private persons are entitled to enter into whatever private contractual arrangements they wish, including contractual

arrangements which provide for the non-judicial foreclosure sale of personal and real property. This has long been the law. See Scott v. Paisley, 271 U.S. 632, at 635 (1926) and Bell Silver & Copper Mining Co. v. First National Bank, 156 U.S. 470 at 477 (1895).

The Fifth Circuit Court of Appeals has specifically reviewed the constitutionality of the Texas foreclosure law, Tex.Prop.Code 51.002 (West 1995) and has found the law to be constitutional. See Barrera v. Security Building & Investment Corp., 519 F.2d 1166 at 1170 (5th Cir. 1975) and Daniel v. Ferguson, 839 F.2d 1124 at 1128-9 (5th Cir. 1988).

Petitioner has raised no factual or legal issues in her Petition which would call for this Court to invalidate the Texas foreclosure statute. Petitioner admits at various points in her Petition that she did not read or understand her mortgage loan or deed of trust, did not pay her mortgage loan, and did not timely arrange for paying off the loan. Even if these facts were established by the record on appeal, they would present no reason to invalidate a law which has been in use in Texas for well over a hundred years.

VI. CONCLUSION

Petitioner's Application for Writ of Certiorari should be denied. There is no sufficient record on appeal for this Court to consider any of the matters raised in the Petition. Petitioner has not established the jurisdiction of this court to consider her appeal. Finally, Petitioner has demonstrated no reason for this Court to invalidate the Texas foreclosure statute.

Respectfully submitted,

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